

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 24, 2001

IN RE:)	
)	
PETITION FOR INTERCONNECTION)	DOCKET NO. 00-01130
ARBITRATION BY DIECA)	
COMMUNICATIONS, INC. D/B/A COVAD)	
COMMUNICATIONS COMPANY, INC.)	
AGAINST BELL SOUTH)	
TELECOMMUNICATIONS, INC. PURSUANT)	
TO SECTION 252(b) OF THE)	
TELECOMMUNICATIONS ACT OF 1996)	

ORDER RELATIVE TO MARCH 27, 2001 PRE-ARBITRATION
CONFERENCE AND BELL SOUTH'S MOTION TO LIMIT ISSUES

This matter is before the Pre-Arbitration Officer of the Tennessee Regulatory Authority ("Authority") upon the Petition for Arbitration of the Interconnection Agreement between BellSouth Telecommunications, Inc. ("BellSouth") and Covad Communications Company, Inc. ("Covad") pursuant to Section 252(b) of the Telecommunications Act of 1996. On March 27, 2001, representatives of BellSouth, Covad, members of the Authority staff and the Pre-Arbitration Officer participated in a Pre-Arbitration Conference which was held relative to BellSouth's *Motion to Limit Issues* and any remaining discovery disputes.

On March 2, 2001, BellSouth filed its *Motion to Limit Issues* which stated that several issues included in Covad's petition for arbitration are already pending in generic dockets before the Authority. BellSouth asserts that resolving the same issue in multiple dockets (i.e. a generic docket and arbitration) is undesirable, as it wastes the limited resources of the Authority and that

parties to the generic proceeding other than BellSouth and Covad will be precluded from participating in this two-party arbitration proceeding. Therefore, BellSouth proposes to move certain arbitration issues to the Performance Measurement generic docket (TRA Docket No. 00-00392), or to allow the decision in the Line Sharing generic docket (TRA Docket No. 00-00544) to supersede this arbitration.

While BellSouth expresses valid concerns in its motion relative to judicial economy, one must weigh such concerns against a factor raised during the arguments of the parties at the March 27, 2001 Pre-Arbitration Conference. During that conference, both parties acknowledge that it is possible that the Authority will not speak to specific aspects of these arbitration issues in the course of the applicable generic proceeding.¹ This is clear from statements of BellSouth at the Pre-Arbitration Conference, such as: “but if the TRA feels fairly confident that they are not going to address those issues in the cost docket, then perhaps we don’t move it. Actually -- I say we don’t move it -- then perhaps it’s appropriate to have these issues considered in this docket.”² The parties then agreed that they are amenable to removing the issues if the Authority will resolve them in a generic proceeding.³

Therefore, the Pre-Arbitration Officer finds that at this time no issues should be removed from Covad’s arbitration petition. If both parties agree that an issue is resolved by the Authority’s rulings in either generic docket, however, the issue will be dismissed from the arbitration. Although this approach will require that both parties file testimony on all pending issues, this is not unduly burdensome, as BellSouth notes that “you’re going to be seeing the same testimony, perhaps from the same witnesses, on both sides of these same issues.”⁴ Based

¹ Transcript of Proceedings, March 27, 2001 at 41.

² *Id.* at 33.

³ *Id.* at 40 and 42.

⁴ *Id.* at 32-33.

on BellSouth's representation, it appears that filing testimony in the instant proceeding should not be unduly burdensome.

At the Pre-Hearing Conference, the filing of testimony and the status of discovery was next discussed. Because the decision of whether to move certain issues would impact on discovery disputes, the parties agreed that any such objections would be resolved after the entry of this Order. Therefore, any unresolved objection to discovery shall be refiled within ten (10) days of the entry of this Order, at which time the Pre-Arbitration Officer will either schedule a second Pre-Arbitration Conference or reinstitute an expedited procedural schedule relative to the filing of testimony.

IT IS THEREFORE ORDERED THAT:

1. BellSouth Telecommunications, Inc. *Motion to Limit Issues* is denied;
2. When both parties agree that an issue has been adequately resolved by the Authority in a generic proceeding, such issue will then be dismissed;
3. Unresolved objections to discovery shall be refiled within ten (10) days; and
4. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from and after the date of this Order.



Gary R. Hotvedt, Pre-Arbitration Officer



K. David Waddell, Executive Secretary